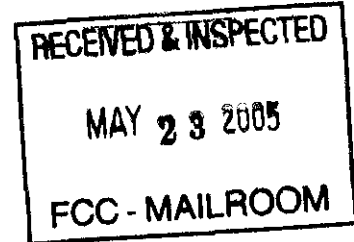


Subject: Appeal.
CC Docket No. 02-6

RECEIVED FILE COPY ORIGINAL



Casa Phoenix
BEN: 12789554
2613 West Campbell Rd.
Phoenix, AZ.
85017

Contact Person: Kent Weisner
Project Engineer
Box 1747
Kirtland, NM 87417
505 598 6442 Office
505 598 0049 Fax
weisken@hotmail.com

Request for review the SLD decision of May 10, 2005 covering Year 2004 is completely and fully incorrect in not funding this facility, a US Dept. of Health and Human Services Unaccompanied Minor facility (Orphanage) run by Southwest Key, Inc.

Funding Commitment Decision Explanation: "A significant portion of the FRN is a request for an ineligible entity Casa Phoenix which is not eligible to receive funding based on the program rules for eligible entities."

Application numbers: 400697, 400713 and 398970.

Foreword: In reviewing the five PIA requests, there were no questions addressing the eligibility question as per qualification under the Elementary and Secondary Act of 1965 reaffirmed under The No Child Left Behind Act of 2001. (Copies of PIA requests attached) If Mr. Sheldon had asked for this information, he would have received the following explanation(s) and information:

- These meet the "schools" requirement through **Federal Law**. The McKinney-Vento Act establishes these children and facilities under **TITLE I** of the No Child Left Behind Act of 2001 (See McKinney Vento Act Attachment 1)
- The United States Department of Agriculture deems all homeless children, by law poverty level for free breakfast and lunch. (See Attachment 2)
- Southwest Key is a "not-for-profit" company. (See Attachment 3)
- Flores vs Reno, Flores vs Ashcroft and Flores vs Meese settlements establish the educational requirements that Casa Phoenix and all of our facilities must meet. (See Attachment 4)
- Casa Phoenix is administered under contract to the Federal Government agency, United States Department of Health and Human Services. The documentation states the Pubic Law source of the funding. (See

No. of Copies rec'd 0
List ABOVE

Attachment 5) This is a Federal Program and State Educational Authorities do not have jurisdiction.

Appeal: By Federal Law and Federal Court mandate, Casa Phoenix meets all the criteria of a School set forth under SLD rules. Mr. Sheldon never addressed the School eligibility issue with us and thus was not qualified to make or take part in a decision.

NOTE: Mr. Sheldon, NECA, SLD,USAC, FCC or Southwest Key do not have the power to change these Laws or to modify Court ordered mandates.. Only the Congress and the President of the United States can.

Thank You, Kent Weisner
Project Engineer, SW Key.

05/16/05



80 South Jefferson Road
Whippany, New Jersey 07981
Fax: 973-599-6521

Universal Service Administrative Company
Schools & Libraries

FAX TRANSMISSION COVER SHEET

To: Kent Weisner
Fax: 15055980049
Subject: E-Rate Application #398970: Validation of school, discount, master
From: Robert Sheldon (PIA Team6)
Date: October 06, 2004
Time: 1:11:12 PM

YOU SHOULD RECEIVE 6 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL THE CONTACT SPECIFIED BELOW.

Mr. Weisner,

Per our phone conversation, I am in the process of reviewing the first of your Casa Phoenix applications for funding. I will need responses to the above issues. Please see the attached memo for further information.

Thank you,

Robert Sheldon
Schools And Libraries Division
Program Integrity Assurance
Phone: 973-560-4451
FAX: 973-599-6521
rsheldo@sl.universalservice.org

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Universal Service Administrative Company
Schools & Libraries Division

October 6, 2004

Kent Weisner
Casa Phoenix
Contact Phone Number: (505) 598-6442
Application Number(s): 398970

The Program Integrity Assurance (PIA) team is in the process of reviewing all Form 471 Applications for schools and libraries discounts to ensure that they are in compliance with the rules of the federal universal service program. We are currently in the process of reviewing your Funding Year 2004 Form 471 Application. To complete our review, we need some additional information. The information needed to complete the review is listed below.

1. Based upon review of your Form 471 application and/or the documentation you provided, we were not able to determine the eligibility of **Casa Phoenix**. In order to be eligible to receive discounted services, per the rules of this support mechanism, schools must meet the statutory definition of an elementary or a secondary school found in the No Child Left Behind Act of 2001 (20 U.S.C. Section 7801 (18) and (38)) and they must not be operating as for-profit businesses, and may not have an endowment exceeding \$50 million. **Please provide documentation that will verify that the entity meets the definition provided above.**
2. Based upon review of your Form 471 application, we were not able to validate your requested discount percentage of 90% for **Casa Phoenix**. If you choose to validate your original requested discount percentage of 90%, then please provide the appropriate documentation if one of the following acceptable methods were used:
 - a. If the school participates in a National School Lunch Program (NSLP), please provide us a **signed copy** (preferably by the Principal, Vice-Principal, Superintendent, or Director of Food Services) of the **Reimbursement Claim Form** that the school sends to the state each month. Make sure that the following 3 items are identified:
 - 1) The Entity name
 - 2) The total number of students enrolled at the entity
 - 3) The total number of students eligible for Free/Reduced Lunch Program for the entity

If the school district fills out an aggregate form for the school district, provide a signed letter from a school official (preferably the Superintendent) that lists the Free/Reduced information for each school in the district.

b. If the discount percentage was determined by information obtained from a survey/application, please provide the following information:

- 1) Total number of students enrolled
- 2) Total number of surveys/applications sent out
- 3) Number of surveys/applications returned
- 4) Total number of students qualified for NSLP per the returned surveys/applications
- 5) Are the surveys/applications and results kept on file.
- 6) Provide a sample copy of a FILLED OUT SURVEY/APPLICATION with the child's personal information crossed out for confidentiality.
- 7) A signed certification that reads: "I certify that only those students who meet the Income Eligibility Guidelines of the National School Lunch Program have been included in Column 5 of Item 10b, of Block 4 (Worksheet A) of the Form 471."
- 8) This information must be in writing on school letterhead and signed by a school official (such as the Principal, Vice-Principal, Superintendent, Director of Food Services).

c. If the discount was determined using a different method than what was identified above, please indicate the method that was used and provide all relevant data.

3. For FRN 1090780, the documentation provided in the Item 21 Attachments was not sufficient to determine the eligibility of your request(s). Please provide a description of the **use of the Master Control Unit** (Examples of use are providing transport information all the way to individual classrooms, or storage/caching of end user files, or end user use)..

For more information, please refer to the Eligible Services List at our website - <http://www.sl.universalservice.org/reference/eligible.asp>.

4. Concerning your funding request 1090781 for application number 398970 under the Schools & Libraries Support Mechanism ("E-rate"), your request might contain some products that are eligible for funding, or not eligible for funding, depending on how they are used. We will need some additional information in order to evaluate your funding request. Please submit the information requested below.

To aid in your response, you may wish to consult our Eligible Services List, which is available at www.sl.universalservice.org. You may also wish to check with your service provider if you are uncertain about making the certifications on this page.

In general, E-rate funds are available to provide connectivity. Other uses are not eligible for support. The products/services being requested may have some ineligible functions including but not limited to: Content filtering, network management, proxy services, caching, and Virtual Private Networks (VPN's). In order for us to further evaluate your request, please refer to the areas below and indicate the statements that apply to you.

- Mitel SX-200 Light PBX (may contain Phones and/or Automatic Call Distribution)

Do you plan to use any ineligible functions as part of your request for Products or Services?

Yes _____ No X

If no, please sign and date the following statement:

I certify that we will not utilize the ineligible functions contained within the requested product or service and that we may be audited. If we are found to have used these products/services in a way that is prohibited, recovery of funds or revocation of funding commitments is a possibility.

Signature: [Signature] Date: 06/10/06/04

If yes, the ineligible function must be cost allocated out of the funding request. The full SLD administrative policy for such products and services is provided in "Cost Allocation Guidelines for Products and Services that Contain Eligible and Ineligible Components," <http://www.sl.universalservice.org/reference/costallocationguide.asp>.

Please provide a cost allocation of the ineligible functions (to include all related costs such as installation, maintenance, taxes, etc).

In general, the method of cost allocation must be based on tangible criteria and provide a realistic result. Please describe the approach used for the cost allocation.

The amount to be allocated out of the request is _____ for the following
ineligibles _____.

Name: _____

Title: _____

Date: _____

Thank you for your participation in the E-rate program.

Please fax or e-mail the requested information to my attention. If you have any questions, please feel free to contact me.

It is important that we receive all of the information requested so we can complete our review. **Failure to do so may result in a reduction or denial of funding.**

Please send the requested information within seven calendar days. If you need additional time to prepare your response, please let me know as soon as possible.

Thank you for cooperation and continued support of the Universal Service Program.

Sincerely,

Robert Sheldon
Schools And Libraries Division
Program Integrity Assurance
Phone: 973-560-4451
FAX: 973-599-6521
rsheldo@sl.universalservice.org



80 South Jefferson Road
Whippany, New Jersey 07981
Fax: 973-599-6521

Universal Service Administrative Company
Schools & Libraries

FAX TRANSMISSION COVER SHEET

To: Kent Weisner
Fax: 15055980049
Subject: E-Rate Application #398970 Casa Phoenix: Outstanding issues
From: Robert Sheldon (PIA Team6)
Date: October 28, 2004
Time: 3:38:33 PM

YOU SHOULD RECEIVE 4 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL THE CONTACT SPECIFIED BELOW.

Kent,

We had corresponded a few weeks back regarding this school. I had received your documentation regarding the internal connections, thank you. We still need the following, which is described in detail in the attached memo.

1. Since this is a residential facility, we need to know if some of these funds will be allocated to the dorms as opposed to classrooms.
2. We need further information for the discount. We received your documentation from the Department of Health and Human Services, but we would need a signed certification from an official of the school with the number of students at the facility and the number of those which are free & reduced, which from your documentation, it would probably be the same number.

I will be sending some information I need regarding two other applications for this school shortly.

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Thank you,

Robert Sheldon
Schools And Libraries Division
Program Integrity Assurance
Phone: 973-560-4451
FAX: 973-599-6521
rsheldo@sl.universalservice.org



Universal Service Administrative Company
Schools & Libraries Division

October 28, 2004

Kent Weisner
Casa Phoenix
Contact Phone Number: (505) 598-6442
Application Number(s): 398970

The Program Integrity Assurance (PIA) team is in the process of reviewing all Form 471 Applications for schools and libraries discounts to ensure that they are in compliance with the rules of the federal universal service program. We are currently in the process of reviewing your Funding Year 2004 Form 471 Application. To complete our review, we need some additional information. The information needed to complete the review is listed below.

1. The entities, listed below, receiving services requested on these applications appear to be residential facilities. Please provide the following additional information:
 - Casa Phoenix (Internal Connections FRN 1090780, 1090781)
 - 1) Describe and detail what portion of the service is provided to dormitories or residences within the residential facilities.
 - 2) Identify the dollars or the percentage of dollars associated with the services that are to be provided the dormitory or residence rooms.
 - 3) Confirm the balance of the services are being provided to facilities of instruction or classrooms or places where library services are provided.
 - 4) Please provide substantiating documentation supporting your statements.
2. Based upon review of your Form 471 application, we were not able to validate your requested discount percentage of 90% for **Casa Phoenix**. If you choose to validate your original requested discount percentage of 90%, then please provide the appropriate documentation if one of the following acceptable methods were used:
 - a. If the school participates in a National School Lunch Program (NSLP), please provide us a **signed copy** (preferably by the Principal, Vice-Principal, Superintendent, or Director of Food Services) of the **Reimbursement Claim Form** that the school sends to the state each month. Make sure that the following 3 items are identified:
 - 1) The Entity name
 - 2) The total number of students enrolled at the entity
 - 3) The total number of students eligible for Free/Reduced Lunch Program for the entity

Note: You had indicated in a previous response that all students were in the poverty level, and you had provided documentation as such. I would still need to see a count of students, and the percentage of those which are free & reduced (which would assumed to be all of them), and a signed statement by a school official.

Please fax or e-mail the requested information to my attention. If you have any questions, please feel free to contact me.

It is important that we receive all of the information requested so we can complete our review. **Failure to do so may result in a reduction or denial of funding.**

Please send the requested information within seven calendar days. If you need additional time to prepare your response, please let me know as soon as possible.

Thank you for cooperation and continued support of the Universal Service Program.

Sincerely,

Robert Sheldon
Schools And Libraries Division
Program Integrity Assurance
Phone: 973-560-4451
FAX: 973-599-6521
rsheldo@sl.universalservice.org



80 South Jefferson Road
Whippany, New Jersey 07981
Fax: 973-599-6521

Universal Service Administrative Company
Schools & Libraries

FAX TRANSMISSION COVER SHEET

To: Kent Weisner
Fax: 15055980049
Subject: E-Rate Application #400713 Casa Phoenix: Internet Access for
From: Robert Sheldon (PIA Team6)
Date: October 28, 2004
Time: 4:01:34 PM

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RECEIVE ALL THE PAGES, PLEASE CALL THE CONTACT SPECIFIED BELOW.

Kent,

This is the second of three applications for Casa Phoenix....again, we need to know if there were any
costs going to the residences.

Thank you,

Robert Sheldon
Schools And Libraries Division
Program Integrity Assurance
Phone: 973-560-4451
FAX: 973-599-6521
rsheldo@sl.universalservice.org

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Universal Service Administrative Company
Schools & Libraries Division

October 28, 2004

Kent Weisner
Casa Phoenix
Contact Phone Number: (505) 598-6442
Application Number(s): 400713

The Program Integrity Assurance (PIA) team is in the process of reviewing all Form 471 Applications for schools and libraries discounts to ensure that they are in compliance with the rules of the federal universal service program. We are currently in the process of reviewing your Funding Year 2004 Form 471 Application. To complete our review, we need some additional information. The information needed to complete the review is listed below.

1. The entities, listed below, receiving services requested on these applications appear to be residential facilities. Please provide the following additional information:
 - Casa Phoenix (Internet Access – DSL connection FRN 1095556)
- 1) Describe and detail what portion of the service is provided to dormitories or residences within the residential facilities.
- 2) Identify the dollars or the percentage of dollars associated with the services that are to be provided the dormitory or residence rooms.
- 3) Confirm the balance of the services are being provided to facilities of instruction or classrooms or places where library services are provided.
- 4) Please provide substantiating documentation supporting your statements.

Please fax or e-mail the requested information to my attention. If you have any questions, please feel free to contact me.

It is important that we receive all of the information requested so we can complete our review. **Failure to do so may result in a reduction or denial of funding.**

Please send the requested information within seven calendar days. If you need additional time to prepare your response, please let me know as soon as possible.

Thank you for cooperation and continued support of the Universal Service Program.

Sincerely,

Robert Sheldon
Schools And Libraries Division
Program Integrity Assurance
Phone: 973-560-4451
FAX: 973-599-6521
rsheldo@sl.universalservice.org



80 South Jefferson Road
Whippany, New Jersey 07981
Fax: 973-599-6521

Universal Service Administrative Company
Schools & Libraries

FAX TRANSMISSION COVER SHEET

To: Kent Weisner
Fax: 15055980049
Subject: E-Rate Application #400697 Casa Phoenix: Residential cost, phone
From: Robert Sheldon (PIA Team6)
Date: October 28, 2004
Time: 4:39:33 PM

YOU SHOULD RECEIVE 4 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL THE CONTACT SPECIFIED BELOW.

Kent,

Here is the last of the three requests for Casa Phoenix, this one for phone service. Again, we would need to know if any costs are going to the residences. Also, for the Qwest and Language Line providers, we need to know the type of phone service. Please see the attached memo for further information.

Thank you,

Robert Sheldon
Schools And Libraries Division
Program Integrity Assurance
Phone: 973-560-4451
FAX: 973-599-6521
rsheldo@sl.universalservice.org

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Universal Service Administrative Company
Schools & Libraries Division

October 28, 2004

Kent Weisner
Casa Phoenix
Contact Phone Number: (505) 598-6442
Application Number(s): 400697

The Program Integrity Assurance (PIA) team is in the process of reviewing all Form 471 Applications for schools and libraries discounts to ensure that they are in compliance with the rules of the federal universal service program. We are currently in the process of reviewing your Funding Year 2004 Form 471 Application. To complete our review, we need some additional information. The information needed to complete the review is listed below.

1. The entities, listed below, receiving services requested on these applications appear to be residential facilities. Please provide the following additional information:
 - Casa Phoenix (Telecommunications requests—breakout for each FRN:
FRN 1095515 (Alltel), 1095519 (Broadwing), 1095534 (Qwest)
 - 1) Describe and detail what portion of the service is provided to dormitories or residences within the residential facilities.
 - 2) Identify the dollars or the percentage of dollars associated with the services that are to be provided the dormitory or residence rooms.
 - 3) Confirm the balance of the services are being provided to facilities of instruction or classrooms or places where library services are provided.
 - 4) Please provide substantiating documentation supporting your statements.
2. Based on your documentation FRN 1095528 appears to be a request for phone service. However, the documentation does not indicate the **type of service** (i.e. local, long distance, POTS, cellular, etc), for which funding is being requested. Please indicate the type of service for which you are requesting service on this request.
3. Based on your documentation FRN 1095534 is a request for phone service. However, the documentation does not indicate the **type of service** (i.e. local, long distance, POTS, cellular, etc), for which funding is being requested. Please indicate the type of service for which you are requesting service on this request.

Please fax or e-mail the requested information to my attention. If you have any questions, please feel free to contact me.

It is important that we receive all of the information requested so we can complete our review. **Failure to do so may result in a reduction or denial of funding.**

Please send the requested information within seven calendar days. If you need additional time to prepare your response, please let me know as soon as possible.

Thank you for cooperation and continued support of the Universal Service Program.

Sincerely,

Robert Sheldon
Schools And Libraries Division
Program Integrity Assurance
Phone: 973-560-4451
FAX: 973-599-6521
rsheldo@sl.universalservice.org



80 South Jefferson Road
Whippany, New Jersey 07981
Fax: 973-599-6521

Universal Service Administrative Company
Schools & Libraries

FAX TRANSMISSION COVER SHEET

To: Kent Weisner
Fax: 15055980049
Subject: E-Rate Applications #398970, 400697, 400713: Additional questions
From: Robert Sheldon (PIA Team6)
Date: November 03, 2004
Time: 3:15:37 PM

YOU SHOULD RECEIVE 4 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL THE CONTACT SPECIFIED BELOW.

Kent,

Thank you for providing the information regarding Casa Phoenix. There are still a couple of outstanding issues here. For app #398970, and I apologize for overlooking this before as this should have been asked up front, I need to know whether the Dual Redundant 330 watt power supply that comes with the Domain Server will be actively online or used as a spare.

For the other two applications, you indicated that no services under Internal Connections are used in residences; however these applications are for Internet Access and Telecommunications. Please clarify. See the attached memo for further details.

As always, if you have any questions, please do not hesitate to contact me.

Thank you,

Robert Sheldon

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Universal Service Administrative Company
Schools & Libraries Division

November 3, 2004

Kent Weisner
Casa Phoenix
Contact Phone Number: (505) 598-6442
Application Number(s): 398970, 400697, 400713

The Program Integrity Assurance (PIA) team is in the process of reviewing all Form 471 Applications for schools and libraries discounts to ensure that they are in compliance with the rules of the federal universal service program. We are currently in the process of reviewing your Funding Year 2004 Form 471 Application. To complete our review, we need some additional information. The information needed to complete the review is listed below.

For Application #398970:

1. For FRN 1090780, for the Dell PoweEdge 2550 Domain Server, it includes Dual Redundant 330 Watt Power Supplies. Please indicate whether this will be active and online, or whether it will be used as a spare.

For Application #400697:

2. The entities, listed below, receiving services requested on these applications appear to be residential facilities. Please provide the following additional information:
 - Casa Phoenix (Telecommunications requests—breakout for each FRN:
FRN 1095515 (Alltel), 1095519 (Broadwing), 1095534 (Qwest) **Note: You had responded that the “dorm type facilities do not have the residents wired under the Internal Connections phase of this operation”. However, this application is a request for telecommunications service.**
- 1) Describe and detail what portion of the service is provided to dormitories or residences within the residential facilities.
- 2) Identify the dollars or the percentage of dollars associated with the services that are to be provided the dormitory or residence rooms.
- 3) Confirm the balance of the services are being provided to facilities of instruction or classrooms or places where library services are provided.
- 4) Please provide substantiating documentation supporting your statements.

For Application #400713:

3. The entities, listed below, receiving services requested on these applications appear to be residential facilities. Please provide the following additional information:
- Casa Phoenix (Internet Access – DSL connection FRN 1095556) **Note: You had responded that the “No service under Internal Connections are used in residences”. However, this application is a request for internet access.**
- 1) Describe and detail what portion of the service is provided to dormitories or residences within the residential facilities.
 - 2) Identify the dollars or the percentage of dollars associated with the services that are to be provided the dormitory or residence rooms.
 - 3) Confirm the balance of the services are being provided to facilities of instruction or classrooms or places where library services are provided.
 - 4) Please provide substantiating documentation supporting your statements.

Please fax or e-mail the requested information to my attention. If you have any questions, please feel free to contact me.

It is important that we receive all of the information requested so we can complete our review. **Failure to do so may result in a reduction or denial of funding.**

Please send the requested information within seven calendar days. If you need additional time to prepare your response, please let me know as soon as possible.

Thank you for cooperation and continued support of the Universal Service Program.

Sincerely,

Robert Sheldon
Schools And Libraries Division
Program Integrity Assurance
Phone: 973-560-4451
FAX: 973-599-6521
rsheldo@sl.universalservice.org

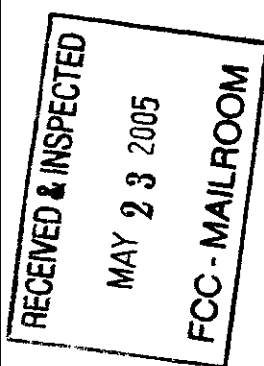
A Hach.

1

The Education of Students in Homeless Situations in the 2001 No Child Left Behind Act: Summary of McKinney-Vento Act and Title I Provisions

The McKinney-Vento Homeless Assistance Act, reauthorized in December 2001, ensures educational rights and protections for children and youth experiencing homelessness. This document summarizes key provisions of the Act, as well as key provisions of the reauthorized Elementary and Secondary Education Act's Title I statute. It is designed to provide a comprehensive overview of new provisions and language changes by topic area. Key provisions of the McKinney-Vento Act that were not amended are also included. A copy of the full text of the legislation is available at the NCH web site at:

<http://www.nationalhomeless.org/ehcylaw.html> and at the NLCHP site at <http://www.nlchp.org>. Issue briefs that explain key legislative provisions, and offer strategies for implementing them, will soon be available on the NCH, NLCHP, and NN4Youth web sites (see below).




Issue	2001 Reauthorization
School Selection	<ul style="list-style-type: none"> According to a child or youth's best interest, Local Educational Agencies (LEAs) must either continue the child/youth's education in the school of origin, or enroll the child/youth in school in any public school that nonhomeless students who live in the attendance area where the child/youth is actually living are eligible to attend [Sec. 722(g)(3)(A)]. "School of origin" is defined as the school the child or youth attended when permanently housed, or the school in which the child or youth was last enrolled [Sec. 722(g)(3)(G)]. In determining best interest, LEAs must, to the extent feasible, keep children/youth in the school of origin, unless it is against the wishes of the parent/guardian [Sec. 722(g)(3)(B)(i)]. (NEW) A homeless child or youth's right to attend their school of origin extends for the duration of homelessness [Sec. 722(g)(3)(A)(i)]. (NEW) If a child or youth becomes permanently housed during the academic year, he or she is entitled to stay in the school of origin for the remainder of the academic year [Sec. 722(g)(3)(A)(i)(II)]. (NEW) Children and youth who become homeless in between academic years are entitled to attend their school of origin for the following academic year [Sec. 722(g)(3)(A)(i)(I)]. If the LEA sends the child/youth to a school other than the school of origin or the school requested by the parent or guardian, the LEA must provide written explanation to the parent or guardian, including the right to appeal under the enrollment disputes provision (see below) [Sec. 722(g)(3)(B)(ii)]. (NEW) In the case of an unaccompanied youth, the LEA homeless liaison must assist in placement/enrollment decisions, consider the youth's wishes, and provide notice to the youth of the right to appeal under the enrollment disputes provisions (see below) [Sec. 722(g)(3)(B)(iii)]. (NEW)

	<ul style="list-style-type: none"> ● The choice regarding placement must be made regardless of whether the child or youth resides with the homeless parent or has been temporarily placed elsewhere [Sec. 722(g)(3)(F)]. (NOTE: the 2001 reauthorization strikes the words "by the parents" which under the previous statute followed the word "elsewhere".)
Enrollment	<ul style="list-style-type: none"> ● The school selected shall immediately enroll the child/youth in school, even if the child or youth lacks records normally required for enrollment, such as previous academic records, medical records, proof of residency, or other documentation [Sec. 722(g)(3)(C)(i)]. (NEW) ● The terms "enroll" and "enrollment" are defined to include attending classes and participating fully in school activities [Sec. 725(3)]. (NEW) ● The enrolling school must immediately contact the last school attended to obtain relevant academic and other records [Sec. 722(g)(3)(C)(ii)]. (NEW) ● If a child or youth lacks immunizations or immunization or medical records, the enrolling school must refer parent/guardian to the liaison, who shall help obtain necessary immunizations or immunization or medical records (See Records, below) [Sec. 7222(g)(3(C))(iii)]. (NEW) ● The Act does not prohibit LEAs from requiring parents or guardians to submit contact information [Sec. 722(g)(3)(H)]. (NEW) ● The McKinney-Vento plan submitted by the State to ED must include strategies to address problems resulting from enrollment delays caused by immunization and medical records requirements; residency requirements; lack of birth certificates, school records, or other documentation; guardianship issues; or uniform or dress code requirements [Sec. 722(g)(1)(H)]. (NOTE: Bold text indicates new language in the 2001 reauthorization). ● The McKinney-Vento plan submitted by the State must include a demonstration that the State Education Agency (SEA) and LEAs in the State have developed, and shall review and revise, policies to remove barriers to the enrollment and retention of homeless children and youth in the State [Sec. 722(g)(1)(I)].
Dispute Resolution	<ul style="list-style-type: none"> ● The McKinney-Vento plan submitted by the State must include a description of procedures for the prompt resolution of disputes regarding the educational placement of homeless children and youth [Sec. 722(g)(1)(C)]. ● If a dispute arises over school selection or enrollment, the child/youth must be immediately admitted to the school in which he/she is seeking enrollment, pending resolution of the dispute [Sec. 722(g)(3)(E)(i)]. (NEW) ● The parent or guardian must be provided with a written explanation of the school's decision on the dispute, including the right to appeal [Sec. 722(g)(3)(E)(ii)]. (NEW) ● The parent/guardian/youth must be referred to the liaison, who will carry out the state's grievance procedure as expeditiously as possible after receiving notice of the dispute [Sec. 722(g)(3)(E)(iii)]. (NEW) ● In the case of an unaccompanied youth, the homeless liaison shall ensure that the youth is immediately enrolled in

	school pending resolution of the dispute [Sec. 722(g)(3)(E)(iv)] . (NEW)
Records	<ul style="list-style-type: none"> Any record ordinarily kept by the school, including immunization or medical records, academic records, birth certificates, guardianship records, and evaluations for special services or programs, of each homeless child or youth must be maintained so that the records are available, in a timely fashion, when a child or youth enters a new school or school district, and in a manner consistent with section 444 of the General Education Provisions Act [Section 722(g)(3)(D)]. (NOTE: words in bold text are new in the 2001 reauthorization.)
Transportation	<ul style="list-style-type: none"> The State and its (LEAs) are required to adopt policies and practices to ensure that transportation is provided, at the request of the parent or guardian (or in the case of an unaccompanied youth, the liaison), to and from the school of origin. If the homeless student continues to live in the area served by the LEA in which the school of origin is located, that LEA must provide or arrange transportation. If the homeless student moves to an area served by another LEA, though continuing his or her education at the school of origin, the LEA of origin and the LEA in which the student is living must agree upon a method to apportion responsibility and costs for transportation to the school of origin. If the LEAs cannot agree upon such a method, the responsibility and costs must be shared equally [Section 722(g)(1)(J)(iii)]. (NEW) In addition, LEAs must provide services to homeless children and youth that are comparable to those received by other students in the school selected, including transportation (see comparable services, below) [Section 722(g)(4)].
Access to Comparable Services	<ul style="list-style-type: none"> Children and youth are to be provided services comparable to those received by other students in the school selected, including transportation services, and education programs for which students meet eligibility criteria, such as services provided under Title I or similar state or local programs; programs for students with disabilities; programs for students with limited English proficiency; vocational or technical programs; gifted and talented programs; and school nutrition programs [Section 722(g)(4)]. (NOTE: 2001 law replaces "school meals" programs with "school nutrition.") The McKinney-Vento plan submitted by the State must include a description of procedures that ensure that homeless children have equal access to the same public preschool programs, administered by the State agency, as provided to other children in the State; that homeless youth and youth separated from the public schools are identified and accorded equal access to appropriate secondary education and support services; and that homeless children and youth who meet the relevant eligibility criteria are able to participate in Federal, State, or local before- and after-school care programs [Sec. 722(g)(1)(F)]. (NOTE: words in bold text are new in the 2001 reauthorization.)
Academic Achievement Standards	<ul style="list-style-type: none"> It is the policy of Congress that homeless children and youth should have access to the education and other services they need to ensure that they have an opportunity to meet the same challenging State student academic achievement standards to which all students are held [Sec. 721(4)]. (NOTE: The 2001 reauthorization replaces the phrase "performance" from the previous statute and replaces it with "academic achievement.") The McKinney-Vento plan submitted by the State to the Secretary must include a description of how homeless children and youth are or will be given the opportunity to meet the same challenging State academic achievement standards all students are expected to meet [Sec. 722(g)(1)(A)]. (NOTE: The 2001 reauthorization replaces the phrase "student performance" from the previous statute and replaces it with "academic achievement.")
LEA Liaisons	<ul style="list-style-type: none"> All LEAs must designate an appropriate staff person, who may also be a coordinator for other Federal programs, as a local educational agency liaison for homeless children and youth to perform duties described in paragraph 6 (A) [Section 722(g)(1)(J)(ii)]. (NEW)

LEA Liaison Duties	<ul style="list-style-type: none"> ● LEA liaisons must ensure that: ● Homeless children and youth are identified by school personnel and through coordination activities with other entities and agencies. (NEW) ● Homeless students enroll in, and have full and equal opportunity to succeed in, the schools of the LEA (NOTE: Bold text represents new language in the 2001 reauthorization). ● Homeless families, children, and youth receive educational services for which they are eligible, including Head Start, Even Start, and pre-school programs administered by the LEA, and referrals to health, mental health, dental, and other appropriate services. ● Parents or guardians are informed of educational and related opportunities available to their children, and are provided with meaningful opportunities to participate in the education of their children. (NEW) ● Public notice of the educational rights of homeless students is disseminated where children and youth receive services under the Act (such as schools, family shelters, and soup kitchens) (NEW) ● Enrollment disputes are mediated in accordance with the Enrollment Disputes section, Sec. 722(g)(3)(E) (NEW) ● The parent/guardian of a homeless child or youth, and any unaccompanied youth, is fully informed of all transportation services, including to the school of origin, and is assisted to accessing transportation services. [Section 722(g)(6)(A)] (NEW) ● Liaisons are required to assist unaccompanied youth in placement/enrollment decisions, including considering the youth's wishes in those decisions, and providing notice to the youth of the right to appeal such decisions under the enrollment disputes provisions [Sec. 722(g)(3)(B)(iii)]. (NEW) ● Liaisons are required to ensure that unaccompanied youth are immediately enrolled in school pending resolution of disputes that might arise over school enrollment or placement [Sec. 722(g)(3)(E)(iv)]. (NEW) ● Liaisons are required to assist children and youth who do not have immunizations, or immunization or medical records, to obtain necessary immunizations, or immunization or medical records [Sec. 722(g)(3)(C)(iii)]. (NEW) ● State coordinators and local educational agencies must inform school personnel, service providers, and advocates who work with homeless families of the duties of the liaison [Sec. 722(g)(6)(B)]. ● As part of their duties, liaisons are required to collaborate and coordinate with state coordinators and community and school personnel responsible for the provision of education and related services to homeless children and youth [Sec. 722(g)(6)(C)]. (NEW)
Segregation	<ul style="list-style-type: none"> ● It is the policy of the Congress that homelessness alone is not sufficient reason to separate students from the mainstream school environment [Sec.721(3)]. (NOTE: The 2001 reauthorization replaces "should not be" from the

	<p>previous statute and replaces it with "is not.")</p> <ul style="list-style-type: none"> ● States that receive McKinney-Vento Act assistance are prohibited from segregating homeless students in separate schools, separate programs within schools, or separate settings within schools, except as is described below [Sec. 722(e)(3)]: <ul style="list-style-type: none"> ○ States that have a separate school operated in FY2000 in a "covered county" are excluded from the prohibition, and are eligible to receive McKinney funds providing that the schools, and the LEAs that the homeless children enrolled in the separate schools are entitled to attend, meet the requirements set forth in this section (Covered counties are Orange County, CA; San Diego County, CA; San Joaquin County, CA; and Maricopa County, AZ). Among these requirements are provision of notice about choice of schools, signed by parents; efforts to remove barriers that lead to the creation of separate schools; a prohibition on other schools referring children to separate schools; and no new school sites [Sec. 722(e)(3)(B)]. ○ If McKinney-Vento services are provided on school grounds, schools must not provide services in settings within a school that segregate homeless children and youth from other children and youth, except as is necessary for short periods of time for health and safety emergencies, or to provide temporary, special, and supplementary services [Sec. 723(a)(2)(B)(ii)]. (NEW) ● State and local educational agencies are required to adopt policies and practices to ensure that homeless children and youth are not segregated on the basis of their status as homeless or stigmatized [Sec. 722(g)(1)(J)(i)]. (NOTE: The 2001 reauthorization replaces "isolated" in the previous statute with "segregated on the basis of their status as homeless.") ● LEA applications for McKinney-Vento Act funds must include a description of policies and procedures, consistent with the prohibition on segregation (see above), that the agency will implement to ensure that activities carried out by the agency will not isolate or stigmatize homeless children and youth [Sec. 723(b)(5)]. (NOTE: The language in bold is new in the 2001 reauthorization.) ● Services provided with McKinney-Vento Act funds must not replace the regular academic program and must be designed to expand upon or improve services provided as part of the school's regular academic program [Sec. 723(a)(3)].
Statewide Technical Assistance	<ul style="list-style-type: none"> ● The Office of State Coordinator is required to provide technical assistance, in coordination with local liaisons, to LEAs in order to ensure statewide compliance with paragraphs 3 through 7 of subsection g (school choice/placement; best interest determination; enrollment; enrollment disputes; records; comparable services; coordination; local liaison duties; and review and revision of policies) and with Sec. 722(e)(3) (the prohibition on segregation) [Section 722(f)(6)]. (NEW) ● The McKinney-Vento plan submitted by the State to the Secretary must indicate what technical assistance the State will furnish to LEAs, and how compliance efforts will be coordinated with local liaisons [Sec. 722(g)(2)(B)]. (NEW).
Statewide Reservation of Funds	<ul style="list-style-type: none"> ● States must distribute at least 75% of their McKinney-Vento allocation to local educational agencies, except that States funded at the minimum level must distribute at least 50% of their McKinney-Vento Act allocations to local educational agencies [Section 722(e)(1)]. (NEW)
Definitions	<ul style="list-style-type: none"> ● The term "homeless child and youth" means ● Children and youth who lack a fixed, regular, and adequate nighttime residence, and includes children and youth

	<p>who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement.</p> <ul style="list-style-type: none"> ● Children and youth who have a primary nighttime residence that is a private or public place not designed for or ordinarily used as a regular sleeping accommodation for human beings. ● Children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings ● Migratory children who qualify as homeless because they are living in circumstances described above [Sec. 725]. (NEW) ● The term unaccompanied youth includes a youth not in the physical custody of a parent or guardian. (NEW) ● The terms "enroll" and "enrollment" include attending classes and participating fully in school activities. (NEW)
<p>Coordination and Collaboration</p>	<ul style="list-style-type: none"> ● The State Coordinator for the Education of Homeless Children and Youth is required to facilitate coordination between the State educational agency, the State social services agency, and other agencies (including agencies providing mental health services) to provide services to homeless children, including preschool-aged homeless children, and youths, and to families of such children and youths [Sec. 722(f)(4)]. (NOTE: Text in bold represents new language in the 2001 reauthorization). ● In order to improve the provision of comprehensive services, the State Coordinator is required to coordinate and collaborate work with educators, including child development and preschool program personnel; providers of services to homeless and runaway children and youths and homeless families (including domestic violence agencies, shelter operators, transitional housing facilities, runaway and homeless youth centers, and transitional living programs for homeless youths); local liaisons; and community organizations and groups representing homeless children, youth, and families [Sec. 722(f)(5)]. (NOTE: Text in bold represents new language in the 2001 reauthorization). ● As part of their duties, liaisons are required to collaborate and coordinate with state coordinators and community and school personnel responsible for the provision of education and related services to homeless children and youth [Sec. 722(g)(6)(C)]. (NEW) ● LEAs that receive McKinney subgrants are required to coordinate the provision of McKinney-Vento funded services with local social service agencies and other agencies or programs providing services to homeless children and youth and their families, including services and programs funded under the Runaway and Homeless Youth Act [Sec.722(g)(5)(A)(i)]. ● LEAs that receive McKinney subgrants are required to coordinate with other LEAs on interdistrict issues, such as transportation or transfer of school records [Sec.722(g)(5)(A)(ii)]. (NEW) ● If applicable, state and local educational agencies that receive McKinney-Vento Act funding must coordinate with state and local housing agencies responsible for developing the comprehensive housing affordability strategy of the Cranston-Gonzalez National Affordable Housing Act to minimize educational disruption for students who become homeless [Sec.722(g)(5)(B)].

	<ul style="list-style-type: none"> ● The coordination efforts of LEAs that receive McKinney-Vento funds must be designed to ensure that homeless children and youth have access and reasonable proximity to available education and related support services, and to raise the awareness of school personnel and service providers of the effects of short-term stays in a shelter and other challenges associated with homelessness [Sec. 722(g)(5)(C)]. (NEW)
SubgrantAwards	<ul style="list-style-type: none"> ● States are required to award competitive subgrants to school districts based on need of agencies for assistance and quality of the application submitted [(Sec. 723(c)(1)]. (NOTE: Text in bold represents new language in the 2001 reauthorization.) ● In determining need, states may consider the number of homeless students within the area served by the agency, and must consider the needs of such students and the ability of the agency to meet such needs. States may also consider: <ul style="list-style-type: none"> ○ The extent to which the proposed use of funds would facilitate the enrollment, retention, and educational success of homeless children and youth; ○ The extent to which the application reflects coordination with other local and State agencies that serve homeless children and youth, and describes how the grantee will meet the LEA requirements under 722(g)(3); ○ The extent to which the applicant exhibits in the application and in current practice a commitment to education for all homeless children and youth; ○ Such other criteria as the agency determines appropriate. [(Sec. 723(c)(2)]. (NOTE: The 2001 reauthorization replaces "as well as the State plan required by section 722(g)" with "describes how the applicant will meet the requirements of 722(g)(3)". ● In determining quality of applications, states must consider: <ul style="list-style-type: none"> ○ The applicant's needs assessment provided as part of the LEA application, and the likelihood that the program presented in the application will meet such needs; ○ The types, intensity, and coordination of the services to be provided by the program; ○ The involvement of parents or guardians; ○ The extent to which homeless children and youth are integrated into regular education programs; ○ The quality of the applicant's evaluation plan; ○ The extent to which services provided under the subtitle will be coordinated with other available services; ○ Such other measures as the State may consider indicative of a high quality program, such as the extent to which the LEA will provide case management or related services to unaccompanied youth. [(Sec. 723(c)(2)]. (NEW)
State Data Collection	<ul style="list-style-type: none"> ● State coordinators are required to gather information on the problems homeless children face in accessing school, the identification of special needs, progress made in addressing those problems and needs, and the success of the programs under the subtitle [Sec. 722(f)(1)]. (NOTE: The 2001 reauthorization eliminates previous statutory requirements for states to provide an estimate of the number of children and youth.) ● State coordinators must collect and transmit to the Secretary, at such time and in such manner as the Secretary may require, a report containing such information as the Secretary determines is necessary to assess the educational needs of homeless children and youth [Sec. 722(f)(3)]. (NEW)
Federal Activity	<ul style="list-style-type: none"> ● The Secretary is required to use a peer review process in reviewing McKinney-Vento state plans, and is required

	<p>to evaluate whether State laws, policies, and practices described in the plan adequately address the problems of homeless children and youth relating to access to education and placement as described in the plan [Sec. 724(a)].</p> <ul style="list-style-type: none"> ● The Secretary is required to provide support and technical assistance to SEAs to assist in carrying out their responsibilities under the subtitle, if it is requested by SEAs [Sec. 724(b)]. ● The Secretary is required to create a public notice of the educational rights of homeless children and youth and disseminate such notice nationwide and to other Federal agencies, programs, and grantees, including Head Start grantees, health care for the homeless projects, emergency food and shelter grantees, and homeless assistance programs administered by the Department of Housing and Urban Development [Sec. 724(c)]. (NEW) ● The Secretary is required to conduct evaluation and dissemination activities of programs [Sec. 724(d)]. ● The Secretary is required to determine the extent to which SEAs are ensuring that each homeless child and homeless youth has access to a free appropriate public education, based on information received from the States and gathered by the Secretary [Sec. 724(f)]. ● The Secretary is required to publish school enrollment guidelines in the Federal Register which describe successful ways in which a State may assist LEAs to immediately enroll homeless students, and how States can review and revise State requirements on immunization, school, or medical records in order to enroll homeless students immediately [Sec. 724(g)]. (NEW) ● The Secretary is required to periodically collect and disseminate data and information on the number and location of homeless children and youth; the educational services they receive; the extent to which their educational needs are being met; and such other data and information as the Secretary determines to be necessary and relevant. The Secretary is required to coordinate data collection and dissemination with the agencies and entities that receive McKinney-Vento funds and administer McKinney-Vento programs [(Sec. 724(h))]. (NEW) ● The Secretary is required to submit a report to the President and to Congress on the status of the education of homeless children and youth, including information on the education of homeless children and youth, and the actions of the Secretary and the effectiveness of McKinney-Vento programs, not later than four years after the date of enactment [Sec. 724(i)]. (NOTE: The 2001 reauthorization changes this provision by eliminating the requirement to submit a report every three years, and by requiring more specific content in the report).
Funding	<ul style="list-style-type: none"> ● No state shall receive less than the greater of \$150,000; one-quarter of one percent of the overall appropriation; or the amount the state received in FY2001. If there are insufficient funds to allot to each State the minimum amount, the Secretary must ratably reduce the allotments to all States based on the proportionate share that each State received in the preceding fiscal year. [Sec. 722(c)(1)]. ● \$70 million is authorized for FY2002, and such sums as may be necessary for fiscal years 2003 through 2007 (Sec. 726).

Amendments to Title I of the Elementary and Secondary Education Act	
State Plans	<ul style="list-style-type: none"> Any State desiring to receive funding under Title I Part A must submit a plan to the Secretary that is coordinated with the McKinney-Vento Homeless Assistance Act [Section 1111 (a)(1)]. (NEW)
Local Plans	<ul style="list-style-type: none"> An LEA may receive funding under Title I Part A only if the LEA has on file with the State educational agency a plan, approved by the State educational agency, that is coordinated with the McKinney-Vento Homeless Assistance Act [Section 1112(a)(1)]. (NEW) Each LEA Title I plan must include a description of the services that will be provided to homeless children, including services provided with funds from the Reservation of Funds set-aside (see below) [Section 1112 (b)(1)(O)]. (NEW)
Reservation of Funds	<ul style="list-style-type: none"> LEAs must reserve such funds as are necessary to provide services comparable to those provided to children in Title I, Part A funded schools to serve homeless children who do not attend participating schools, including providing educationally related support services to children in shelters and other locations where children may live [Section 1113(c)(3)(A)]. (NOTE: The 2001 reauthorization strikes the phrase "where appropriate, eligible," which appeared under the previous statute before "homeless children;" the 2001 reauthorization adds "and other locations where children may live" after the word "shelters.")
Targeted Assistance Schools	<ul style="list-style-type: none"> A child who is homeless and attending any school in the LEA is eligible for services in a Targeted Assistance School Program [Sec. 1115(b)(2)(E)] (NOTE: The 2001 reauthorization strikes "may be eligible" from the previous statute and replaces it with "is eligible.")

For more information, please see:

National Association for the Education of Homeless Children and Youth - www.naehcy.org

National Center for Homeless Education - www.serve.org/nche

National Coalition for the Homeless - www.nationalhomeless.org

National Law Center on Homelessness & Poverty - www.nlchp.org

National Network for Youth - www.nn4youth.org

[Return to Reauthorization Index Page](#)

United States
Department of
Agriculture



Food and
Nutrition
Service

3101 Park
Center Drive
Alexandria, VA
22302-1500

SUBJECT: Categorical Eligibility for Free Lunches and Breakfasts of Runaway,
Homeless, and Migrant Youth: Reauthorization 2004 Implementation
Memo SP 4

TO: Special Nutrition Programs
All Regions

State Agencies
Child Nutrition Programs
All States

Section 107 of the Child Nutrition and WIC Reauthorization Act of 2004 (Act) amended section 9(b) of the Richard B. Russell National School Lunch Act to make runaway, homeless and migrant children categorically eligible for free meal benefits under the National School Lunch and School Breakfast Programs and is effective July 1, 2004. In addition to establishing free meal eligibility, the Act also establishes a requirement for documenting a child's status as runaway, homeless, or migratory.

Previously, through guidance, the Food and Nutrition Service extended categorical

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Guidance for Homeless
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grant programs
to provide guidance
a child is receiving services

likely eligible for free school meals.

Regional and State Directors

Page 2

For migratory children, each State Educational Agency's Migrant Education Program establishes their own process for determining if a child meets the criteria provided under Elementary and Secondary Education Act of 1965. State Child Nutrition Agencies must contact their State Migrant Education Program to develop a plan for sharing and documenting the migratory child's eligibility for free school meals. To find the contact for your State Migrant Education Program view the following website:

- Contact Information for all State Directors of Migrant Education
<http://www.ed.gov/programs/mep/contacts.html>

If you have any questions, please contact Rosemary O'Connell or Mara McElmurray at 703-305-2590.



STANLEY C. GARNETT
Director
Child Nutrition Division

3000 SOUTH LH 35 SUITE 410
AUSTIN, TEXAS 78704
512 462-2181
512 462-2028 FAX



ATTACH. 3.

Fax

To: Kent Weisner

From: LaRasha Smith

Fax: (505) 598-0049

Pages : 3

Phone:

Date: 4-7-04

Re: non-profit status

CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Attached is the latest proof of non-profit status for Southwest Key Program. We should be getting a more updated one by the end of the day tomorrow. As soon as we get it, I will fax that to you as well. Thanks!

11 3.

Internal Revenue Service**Department of the Treasury**

**P. O. Box 2608
Cincinnati, OH 45201**

Date: October 29, 2002

Person to Contact:
Ronnie Clemons
Customer Service Representative
Toll Free Telephone Number:
8:00 a.m. to 6:30 p.m. EST
877-829-5500
Fax Number:
513-263-3756
Federal Identification Number:
74-2481167

**Southwest Key Program, Inc.
3000 South IH 35 410
Austin, TX 78704-8536**

Dear Sir or Madam:

This letter is in response to your request for a copy of your organization's determination letter. This letter will take the place of the copy you requested.

Our records indicate that a determination letter issued in June 1988, granted your organization exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code. That letter is still in effect.

Based on information subsequently submitted, we classified your organization as one that is not a private foundation within the meaning of section 509(a) of the Code because it is an organization described in section 509(a)(2).

This classification was based on the assumption that your organization's operations would continue as stated in the application. If your organization's sources of support, or its character, method of operations, or purposes have changed, please let us know so we can consider the effect of the change on the exempt status and foundation status of your organization.

Your organization is required to file Form 990, Return of Organization Exempt from Income Tax, only if its gross receipts each year are normally more than \$25,000. If a return is required, it must be filed by the 15th day of the fifth month after the end of the organization's annual accounting period. The law imposes a penalty of \$20 a day, up to a maximum of \$10,000, when a return is filed late, unless there is reasonable cause for the delay.

All exempt organizations (unless specifically excluded) are liable for taxes under the Federal Insurance Contributions Act (social security taxes) on remuneration of \$100 or more paid to each employee during a calendar year. Your organization is not liable for the tax imposed under the Federal Unemployment Tax Act (FUTA).

Organizations that are not private foundations are not subject to the excise taxes under Chapter 42 of the Code. However, these organizations are not automatically exempt from other federal excise taxes.

Donors may deduct contributions to your organization as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to your organization or for its use are deductible for federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

-2-

Southwest Key Program, Inc.
74-2481167

Your organization is not required to file federal income tax returns unless it is subject to the tax on unrelated business income under section 511 of the Code. If your organization is subject to this tax, it must file an income tax return on the Form 990-T, Exempt Organization Business Income Tax Return. In this letter, we are not determining whether any of your organization's present or proposed activities are unrelated trade or business as defined in section 513 of the Code.

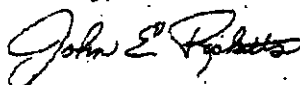
The law requires you to make your organization's annual return available for public inspection without charge for three years after the due date of the return. You are also required to make available for public inspection a copy of your organization's exemption application, any supporting documents and the exemption letter to any individual who requests such documents in person or in writing. You can charge only a reasonable fee for reproduction and actual postage costs for the copied materials. The law does not require you to provide copies of public inspection documents that are widely available, such as by posting them on the Internet (World Wide Web). You may be liable for a penalty of \$20 a day for each day you do not make these documents available for public inspection (up to a maximum of \$10,000 in the case of an annual return).

Because this letter could help resolve any questions about your organization's exempt status and foundation status, you should keep it with the organization's permanent records.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

This letter affirms your organization's exempt status.

Sincerely,



John E. Ricketts, Director, TE/GE
Customer Account Services



Charitable Orgs

Exemption Requirements

To be tax-exempt as an organization described in IRC Section 501(c)(3) of the Code, an organization must be organized and operated exclusively for one or more of the purposes set forth in IRC Section 501(c)(3) and none of the earnings of the organization may inure to any private shareholder or individual. In addition, it may not attempt to influence legislation as a substantial part of its activities and it may not participate at all in campaign activity for or against political candidates.

The organizations described in IRC Section 501(c)(3) are commonly referred to under the general heading of "charitable organizations." Organizations described in IRC Section 501(c)(3), other than testing for public safety organizations, are eligible to receive tax-deductible contributions in accordance with IRC Section 170.

The exempt purposes set forth in IRC Section 501(c)(3) are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and the prevention of cruelty to children or animals. The term charitable is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening the burdens of government; lessening of neighborhood tensions; elimination of prejudice and discrimination; defense of human and civil rights secured by law; and combating community deterioration and juvenile delinquency.

To be organized exclusively for a charitable purpose, the organization must be a corporation, community chest, fund, or foundation. A charitable trust is a fund or foundation and will qualify. However, an individual or a partnership will not qualify. The articles of organization must limit the organization's purposes to one or more of the exempt purposes set forth in IRC Section 501(c)(3) and must not expressly empower it to engage, other than as an insubstantial part of its activities, in activities that are not in furtherance of one or more of those purposes. This requirement may be met if the purposes stated in the articles of organization are limited in some way by reference to IRC Section 501(c)(3). In addition, assets of an organization must be permanently dedicated to an exempt purpose. This means that should an organization dissolve, its assets must be distributed for an exempt purpose described in this chapter, or to the federal government or to a state or local government for a public purpose. To establish that an organization's assets will be permanently dedicated to an exempt purpose, the articles of organization should contain a provision insuring their distribution for an exempt purpose in the event of dissolution. Although reliance may be placed upon state law to establish permanent dedication of assets for exempt purposes, an organization's application can be processed by the IRS more rapidly if its articles of organization include a provision insuring permanent dedication of assets for exempt purposes. For examples of provisions that meet these requirements, download [Publication 557, Tax-Exempt Status for Your Organization](#).

An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of the exempt purposes specified in IRC Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. For more information concerning types of charitable organizations and their activities, download [Publication 557](#).

The organization must not be organized or operated for the benefit of private interests, such as the creator or the creator's family, shareholders of the organization, other designated

individuals, or persons controlled directly or indirectly by such private interests. No part of the net earnings of an IRC Section 501(c)(3) organization may inure to the benefit of any private shareholder or individual. A private shareholder or individual is a person having a personal and private interest in the activities of the organization. If the organization engages in an excess benefit transaction with a person having substantial influence over the organization, an excise tax may be imposed on the person and any managers agreeing to the transaction.

IRC section 501(c)(3) organizations are restricted in the amount of political and legislative (lobbying) activities they may conduct. For a detailed discussion, see [Political and Lobbying Activities](#). For further information regarding lobbying activities by charities, download [Lobbying Issues](#); for more information regarding political activities of charities, see the FY-2002 CPE topic entitled [Election Year Issues](#).

04/07/2004 15:52 FAX 513 263 3756

TE/GE CINTI

002

Internal Revenue Service

Date: April 7, 2004

Southwest Key Program, Inc.
3000 S. IH 35 410
Austin, TX 78704-6536

Department of the Treasury
P. O. Box 2508
Cincinnati, OH 45201

Person to Contact:
Kim A. Chambers 31-07874
Customer Service Specialist
Toll Free Telephone Number:
8:00 a.m. to 6:30 p.m. EST
877-829-5500
Fax Number:
513-263-3756
Federal Identification Number:
74-2481167

Dear Sir or Madam:

This is in response to your request of April 7, 2004, regarding your organization's tax-exempt status.

In June 1988 we issued a determination letter that recognized your organization as exempt from federal income tax. Our records indicate that your organization is currently exempt under section 501(c)(3) of the Internal Revenue Code.

Based on information subsequently submitted, we classified your organization as one that is not a private foundation within the meaning of section 509(a) of the Code because it is an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi).

This classification was based on the assumption that your organization's operations would continue as stated in the application. If your organization's sources of support, or its character, method of operations, or purposes have changed, please let us know so we can consider the effect of the change on the exempt status and foundation status of your organization.

Your organization is required to file Form 990, Return of Organization Exempt from Income Tax, only if its gross receipts each year are normally more than \$25,000. If a return is required, it must be filed by the 15th day of the fifth month after the end of the organization's annual accounting period. The law imposes a penalty of \$20 a day, up to a maximum of \$10,000, when a return is filed late, unless there is reasonable cause for the delay.

All exempt organizations (unless specifically excluded) are liable for taxes under the Federal Insurance Contributions Act (social security taxes) on remuneration of \$100 or more paid to each employee during a calendar year. Your organization is not liable for the tax imposed under the Federal Unemployment Tax Act (FUTA).

Organizations that are not private foundations are not subject to the excise taxes under Chapter 42 of the Code. However, these organizations are not automatically exempt from other federal excise taxes.

Donors may deduct contributions to your organization as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to your organization or for its use are deductible for federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

-2-

Southwest Key Program, Inc.
74-2481167

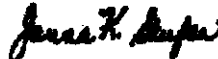
Your organization is not required to file federal income tax returns unless it is subject to the tax on unrelated business income under section 511 of the Code. If your organization is subject to this tax, it must file an income tax return on the Form 990-T, Exempt Organization Business Income Tax Return. In this letter, we are not determining whether any of your organization's present or proposed activities are unrelated trade or business as defined in section 513 of the Code.

Section 6104 of the Internal Revenue Code requires you to make your organization's annual return available for public inspection without charge for three years after the due date of the return. The law also requires organizations that received recognition of exemption on July 15, 1987, or later, to make available for public inspection a copy of the exemption application, any supporting documents and the exemption letter to any individual who requests such documents in person or in writing. Organizations that received recognition of exemption before July 15, 1987, and had a copy of their exemption application on July 15, 1987, are also required to make available for public inspection a copy of the exemption application, any supporting documents and the exemption letter to any individual who requests such documents in person or in writing. For additional information on disclosure requirements, please refer to Internal Revenue Bulletin 1999 - 17.

Because this letter could help resolve any questions about your organization's exempt status and foundation status, you should keep it with the organization's permanent records.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

Sincerely,



Jenna K. Skufca, Director, TE/GE
Customer Account Services

ATTACH. 4



**Nationwide settlement regulating INS treatment of detained minors:
Flores v. Ashcroft.**

Center for Human Rights & Constitutional Law

***Flores v. Meese: Final Text of Settlement Establishing
Minimum Standards and Conditions for Housing and
Release of Juveniles in INS Custody***

**CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL
LAW**

**Carlos Holguín Peter A. Schey
256 South Occidental Boulevard
Los Angeles, CA 90057
(213) 388-8693**

NATIONAL CENTER FOR YOUTH LAW

Alice Bussiere

James Morales

114 Sansome Street, Suite 905

San Francisco, CA 94104

(415) 453-3307

Attorneys for Plaintiffs

Michael Johnson

Assistant United States Attorney

300 N. Los Angeles St., Rm. 7516

Los Angeles, CA 90012

Allen Hausman

Office of Immigration Litigation

*See Exhibit 1
Per. 4
Education
Ad*

Civil Division
U.S. Department of Justice
P.O. Box 878, Ben Franklin Station
Washington, DC 20044

Attorneys for Defendants

Additional counsel listed next page

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JENNY LISETTE FLORES, et al.,) Case No. CV 85-4544-RJK(Px)
Plaintiffs,) Stipulated Settlement
) Agreement
-vs-)
)
JANET RENO, Attorney General)
of the United States, et al.,)
)
Defendants.)
)

Plaintiffs Additional Counsel:

ACLU Foundation of Southern California
Mark Rosenbaum
Sylvia Argueta
1616 Beverly Boulevard
Los Angeles, CA 90026
Telephone: (213) 977-9500

STREICH LANG
Susan G. Boswell
Jeffrey Willis
1500 Bank of America Plaza
33 North Stone Avenue
Tucson, AZ 85701
Telephone: (602) 770-8700

Defendants Additional Counsel:

Arthur Strathern

Mary Jand Candaux

Office of the General Counsel

U.S. Immigration & Naturalization Service

425 I St. N.W.

Washington, DC 20536

STIPULATED SETTLEMENT AGREEMENT

WHEREAS, Plaintiffs have filed this action against Defendants, challenging, *inter alia*, the constitutionality of Defendants' policies, practices and regulations regarding the detention and release of unaccompanied minors taken into the custody of the Immigration and Naturalization Service (INS) in the Western Region; and

WHEREAS, the district court has certified this case as a class action on behalf of all minors apprehended by the INS in the Western Region of the United States; and

WHEREAS, this litigation has been pending for nine (9) years, all parties have conducted extensive discovery, and the United States Supreme Court has upheld the constitutionality of the challenged INS regulations on their face and has remanded for further proceedings consistent with its opinion; and

WHEREAS, on November 30, 1987, the parties reached a settlement agreement requiring that minors in INS custody in the Western Region be housed in facilities meeting certain standards, including standards for the housing and care of dependent children, and Plaintiffs' motion to enforce compliance with that settlement is currently pending before the court; and

WHEREAS, a trial in this case would be complex, lengthy and costly to all parties concerned, and the decision of the district court would be subject to appeal by the losing parties with the final outcome uncertain; and

WHEREAS, the parties believe that settlement of this action is in their best interests and best serves the interests of justice by avoiding a complex, lengthy and costly trial, and subsequent appeals which could last several more years;

NOW, THEREFORE, Plaintiffs and Defendants enter into this Stipulated Settlement Agreement (the Agreement), stipulate that it constitutes a full and complete resolution of the issues raised in this action, and agree to the following:

I DEFINITIONS

As used throughout this Agreement the following definitions shall apply:

1. The term "party" or "parties" shall apply to Defendants and Plaintiffs. As the term applies to Defendants, it shall include their agents, employees, contractors and/or successors in office. As the term applies to Plaintiffs, it shall include all class members.
2. The term "Plaintiff" or "Plaintiffs" shall apply to the named plaintiffs and all class members.
3. The term "class member" or "class members" shall apply to the persons defined in Paragraph 10 below.
4. The term "minor" shall apply to any person under the age of eighteen (18) years who is detained in the legal custody of the INS. This Agreement shall cease to apply to any person who has reached the age of eighteen years. The term "minor" shall not include an emancipated minor or an individual who has been incarcerated due to a conviction for a criminal offense as an adult. The INS shall treat all persons who are under the age of eighteen but not included within the definition of "minor" as adults for all purposes, including release on bond or recognizance.
5. The term "emancipated minor" shall refer to any minor who has been determined to be emancipated in an appropriate state judicial proceeding.
6. The term "licensed program" shall refer to any program, agency or organization that is licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children, including a program operating group homes, foster homes, or facilities for special needs minors. A licensed program must also meet those standards for licensed programs set forth in Exhibit 1 attached hereto. All homes and facilities operated by licensed programs, including facilities for special needs minors, shall be non-secure as required under state law; provided, however, that a facility for special needs minors may maintain that level of security permitted under state law which is necessary for the protection of a minor or others in appropriate circumstances, *e.g.*, cases in which a minor has drug or alcohol problems or is mentally ill. The INS shall make reasonable efforts to provide licensed placements in those geographical areas where the majority of minors are apprehended, such as southern California, southeast Texas, southern Florida and the northeast corridor.
7. The term "special needs minor" shall refer to a minor whose mental and/or physical condition requires special services and treatment by staff. A minor may have special needs due to drug or alcohol abuse, serious emotional disturbance, mental illness or retardation, or a physical condition or chronic illness that requires special services or treatment. A minor who has suffered serious neglect or abuse may be considered a minor with special needs if the minor requires special services or treatment as a result of the neglect or abuse. The INS shall assess minors to determine if they have special needs and if so, shall place such minors, whenever possible, in licensed programs in which the INS places children without special needs, but which provide services and treatment for such special needs.
8. The term "medium security facility" shall refer to a facility that is operated by a program, agency or organization licensed by an appropriate State agency and that meets those standards set forth in Exhibit 1 attached hereto. A medium security facility is designed for minors who require close supervision but do not need placement in juvenile correctional facilities. It provides 24-hour awake supervision, custody, care, and treatment. It maintains stricter security measures, such as intensive staff supervision, than a facility operated by a licensed program in order to control problem behavior and to prevent escape. Such a facility may have a secure perimeter but shall not be equipped internally

with major restraining construction or procedures typically associated with correctional facilities.

II SCOPE OF SETTLEMENT, EFFECTIVE DATE, AND PUBLICATION

9. This Agreement sets out nationwide policy for the detention, release, and treatment of minors in the custody of the INS and shall supersede all previous INS policies that are inconsistent with the terms of this Agreement. This Agreement shall become effective upon final court approval, except that those terms of this Agreement regarding placement pursuant to Paragraph 19 shall not become effective until all contracts under the Program Announcement referenced in Paragraph 20 below are negotiated and implemented. The INS shall make its best efforts to execute these contracts within 120 days after the court's final approval of this Agreement. However, the INS will make reasonable efforts to comply with Paragraph 19 prior to full implementation of all such contracts. Once all contracts under the Program Announcement referenced in Paragraph 20 have been implemented, this Agreement shall supersede the agreement entitled Memorandum of Understanding Re Compromise of Class Action: Conditions of Detention (hereinafter "MOU"), entered into by and between the Plaintiffs and Defendants and filed with the United States District Court for the Central District of California on November 30, 1987, and the MOU shall thereafter be null and void. However, Plaintiffs shall not institute any legal action for enforcement of the MOU for a six (6) month period commencing with the final district court approval of this Agreement, except that Plaintiffs may institute enforcement proceedings if the Defendants have engaged in serious violations of the MOU that have caused irreparable harm to a class member for which injunctive relief would be appropriate. Within 120 days of the final district court approval of this Agreement, the INS shall initiate action to publish the relevant and substantive terms of this Agreement as a Service regulation. The final regulations shall not be inconsistent with the terms of this Agreement. Within 30 days of final court approval of this Agreement, the INS shall distribute to all INS field offices and sub-offices instructions regarding the processing, treatment, and placement of juveniles. Those instructions shall include, but may not be limited to, the provisions summarizing the terms of the Agreement attached hereto as Exhibit 2.

III CLASS DEFINITION

10. The certified class in this action shall be defined as follows: "All minors who are detained in the legal custody of the INS."

IV STATEMENTS OF GENERAL APPLICABILITY

11. The INS treats, and shall continue to treat, all minors in its custody with dignity, respect and special concern for their particular vulnerability as minors. The INS shall place each detained minor in the least restrictive setting appropriate to the minor's age and special needs, provided that such setting is consistent with its interests to ensure the minor's timely appearance before the INS and the immigration courts and to protect the minor's well-being and that of others. Nothing herein shall require the INS to release a minor to any person or agency whom the INS has reason to believe may harm or neglect the minor or fail to present him or her before the INS or the immigration courts when requested to do so.

V PROCEDURES AND TEMPORARY PLACEMENT FOLLOWING ARREST

12. Whenever the INS takes a minor into custody, it shall expeditiously process the minor and shall provide the minor with a notice of rights, including the right to a bond redetermination hearing if applicable. Following arrest, the INS shall hold minors in facilities that are safe and sanitary and that are consistent with the INS's concern for the particular vulnerability of minors. Facilities will provide access to toilets and sinks, drinking water and food as appropriate, medical assistance if the minor is in need of emergency services, adequate temperature control and ventilation, adequate supervision to protect minors from others, and contact with family members who were arrested with the minor. The INS will segregate unaccompanied minors from unrelated adults. Where such segregation is not immediately possible, an unaccompanied minor will not be detained with an unrelated adult for more than 24 hours. If there is no one to whom the INS may release the minor pursuant to Paragraph 14, and no appropriate licensed program is immediately available for placement pursuant to Paragraph 19, the minor may be placed in an INS detention facility, or other INS-contracted facility, having separate accommodations for minors, or a State or county juvenile detention facility. However, minors shall be separated from delinquent offenders. Every effort must be taken to ensure that the safety and well-being of the minors detained in these facilities are satisfactorily provided for by the staff. The INS will transfer a minor from a placement under this paragraph to a placement under Paragraph 19 (i) within three (3) days, if the minor was apprehended in an INS district in which a licensed program is located and has space available; or (ii) within five (5) days in all other cases; except:

1. as otherwise provided under Paragraph 13 or Paragraph 21;
2. as otherwise required by any court decree or court-approved settlement;
3. in the event of an emergency or influx of minors into the United States, in which case the INS shall place all minors pursuant to Paragraph 19 as expeditiously as possible; or
4. where individuals must be transported from remote areas for processing or speak unusual languages such that the INS must locate interpreters in order to complete processing, in which case the INS shall place all such minors pursuant to Paragraph 19 within five (5) business days.

B. For purposes of this Paragraph, the term "emergency" shall be defined as any act or event that prevents the placement of minors pursuant to Paragraph 19 within the time frame provided. Such emergencies include natural disasters (e.g., earthquakes, hurricanes, etc.), facility fires, civil disturbances, and medical emergencies (e.g., a chicken pox epidemic among a group of minors). The term "influx of minors into the United States" shall be defined as those circumstances where the INS has, at any given time, more than 130 minors eligible for placement in a licensed program under Paragraph 19, including those who have been so placed or are awaiting such placement.

C. In preparation for an "emergency" or "influx," as described in Subparagraph B, the INS shall have a written plan that describes the reasonable efforts that it will take to place all minors as expeditiously as possible. This plan shall include the identification of 80 beds that are potentially available for INS placements and that are licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children. The plan, without identification of the additional beds available, is attached as Exhibit 3. The INS shall not be obligated to fund these additional beds on an ongoing basis. The INS shall update this listing of additional beds on a quarterly basis and provide Plaintiffs' counsel with a copy of this listing.

13. If a reasonable person would conclude that an alien detained by the INS is an adult despite his claims to be a minor, the INS shall treat the person as an adult for all purposes, including confinement and release on bond or recognizance. The INS may require the alien to submit to a medical or dental examination conducted by a medical professional or to submit to other appropriate procedures to

verify his or her age. If the INS subsequently determines that such an individual is a minor, he or she will be treated as a minor in accordance with this Agreement for all purposes.

VI GENERAL POLICY FAVORING RELEASE

14. Where the INS determines that the detention of the minor is not required either to secure his or her timely appearance before the INS or the immigration court, or to ensure the minor's safety or that of others, the INS shall release a minor from its custody without unnecessary delay, in the following order of preference, to:

- A. a parent;
- B. a legal guardian;
- C. an adult relative (brother, sister, aunt, uncle, or grandparent);
- D. an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor's well-being in (i) a declaration signed under penalty of perjury before an immigration or consular officer or (ii) such other document(s) that establish(es) to the satisfaction of the INS, in its discretion, the affiant's paternity or guardianship;
- E. a licensed program willing to accept legal custody; or
- F. an adult individual or entity seeking custody, in the discretion of the INS, when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility.

15. Before a minor is released from INS custody pursuant to Paragraph 14 above, the custodian must execute an Affidavit of Support (Form I-134) and an agreement to:

- A. provide for the minor's physical, mental, and financial well-being;
- B. ensure the minor's presence at all future proceedings before the INS and the immigration court;
- C. notify the INS of any change of address within five (5) days following a move;
- D. in the case of custodians other than parents or legal guardians, not transfer custody of the minor to another party without the prior written permission of the District Director;
- E. notify the INS at least five days prior to the custodian's departing the United States of such departure, whether the departure is voluntary or pursuant to a grant of voluntary departure or order of deportation; and
- F. if dependency proceedings involving the minor are initiated, notify the INS of the initiation of such proceedings and the dependency court of any immigration proceedings pending against the minor.

In the event of an emergency, a custodian may transfer temporary physical custody of a minor prior to securing permission from the INS but shall notify the INS of the transfer as soon as is practicable thereafter, but in all cases within 72 hours. For purposes of this Paragraph, examples of an "emergency" shall include the serious illness of the custodian, destruction of the home, etc. In all cases where the custodian in writing seeks written permission for a transfer, the District Director shall promptly respond to the request.

16. The INS may terminate the custody arrangements and assume legal custody of any minor whose custodian fails to comply with the agreement required under Paragraph 15. The INS, however, shall not terminate the custody arrangements for minor violations of that part of the custodial agreement outlined at Subparagraph 15.C above.

17. A positive suitability assessment may be required prior to release to any individual or program pursuant to Paragraph 14. A suitability assessment may include such components as an investigation of the living conditions in which the minor would be placed and the standard of care he would receive, verification of identity and employment of the individuals offering support, interviews of members of the household, and a home visit. Any such assessment should also take into consideration the wishes and concerns of the minor.

18. Upon taking a minor into custody, the INS, or the licensed program in which the minor is placed, shall make and record the prompt and continuous efforts on its part toward family reunification and the release of the minor pursuant to Paragraph 14 above. Such efforts at family reunification shall continue so long as the minor is in INS custody.

VII INS CUSTODY

19. In any case in which the INS does not release a minor pursuant to Paragraph 14, the minor shall remain in INS legal custody. Except as provided in Paragraphs 12 or 21, such minor shall be placed temporarily in a licensed program until such time as release can be effected in accordance with Paragraph 14 above or until the minor's immigration proceedings are concluded, whichever occurs earlier. All minors placed in such a licensed program remain in the legal custody of the INS and may only be transferred or released under the authority of the INS; provided, however, that in the event of an emergency a licensed program may transfer temporary physical custody of a minor prior to securing permission from the INS but shall notify the INS of the transfer as soon as is practicable thereafter, but in all cases within 8 hours.

20. Within 60 days of final court approval of this Agreement, the INS shall authorize the United States Department of Justice Community Relations Service to publish in the Commerce Business Daily and/or the Federal Register a Program Announcement to solicit proposals for the care of 100 minors in licensed programs.

21. A minor may be held in or transferred to a suitable State or county juvenile detention facility or a secure INS detention facility, or INS-contracted facility, having separate accommodations for minors whenever the District Director or Chief Patrol Agent determines that the minor:

A. has been charged with, is chargeable, or has been convicted of a crime, or is the subject of delinquency proceedings, has been adjudicated delinquent, or is chargeable with a delinquent act; provided, however, that this provision shall not apply to any minor whose offense(s) fall(s) within either of the following categories:

- i. Isolated offenses that (1) were not within a pattern or practice of criminal activity and (2) did not involve violence against a person or the use or carrying of a weapon (Examples: breaking and entering, vandalism, DUI, etc. This list is not exhaustive.)
- ii. Petty offenses, which are not considered grounds for stricter means of detention

in any case (Examples: shoplifting, joy riding, disturbing the peace, etc. This list is not exhaustive.);

As used in this paragraph, "chargeable" means that the INS has probable cause to believe that the individual has committed a specified offense;

B. has committed, or has made credible threats to commit, a violent or malicious act (whether directed at himself or others) while in INS legal custody or while in the presence of an INS officer;

C. has engaged, while in a licensed program, in conduct that has proven to be unacceptably disruptive of the normal functioning of the licensed program in which he or she has been placed and removal is necessary to ensure the welfare of the minor or others, as determined by the staff of the licensed program (Examples: drug or alcohol abuse, stealing, fighting, intimidation of others, etc. This list is not exhaustive.);

D. is an escape-risk; or

E. must be held in a secure facility for his or her own safety, such as when the INS has reason to believe that a smuggler would abduct or coerce a particular minor to secure payment of smuggling fees.

22. The term "escape-risk" means that there is a serious risk that the minor will attempt to escape from custody. Factors to consider when determining whether a minor is an escape-risk or not include, but are not limited to, whether:

A. the minor is currently under a final order of deportation or exclusion;

B. the minor's immigration history includes: a prior breach of a bond; a failure to appear before the INS or the immigration court; evidence that the minor is indebted to organized smugglers for his transport; or a voluntary departure or a previous removal from the United States pursuant to a final order of deportation or exclusion;

C. the minor has previously absconded or attempted to abscond from INS custody.

23. The INS will not place a minor in a secure facility pursuant to Paragraph 21 if there are less restrictive alternatives that are available and appropriate in the circumstances, such as transfer to (a) medium security facility which would provide intensive staff supervision and counseling services or (b) another licensed program. All determinations to place a minor in a secure facility will be reviewed and approved by the regional juvenile coordinator.

24A. A minor in deportation proceedings shall be afforded a bond redetermination hearing before an immigration judge in every case, unless the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing.

B. Any minor who disagrees with the INS's determination to place that minor in a particular type of facility, or who asserts that the licensed program in which he or she has been placed does not comply with the standards set forth in Exhibit 1 attached hereto, may seek judicial review in any United States District Court with jurisdiction and venue over the matter to challenge that placement determination